IN THE HIGH COURT OF JUDICIATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1632 OF 1990

M/s.Saurashtra Ball Pen
Pvt. Limited .. Petitioner.
V/s.
Smt.A. Baidya & Others .. Respondents.

Mr.Arun Sathe i/b. Rajesh Shah & Co. for the petitioner.

Mr.Ashok Kotangale for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 18TH OCTOBER, 2005.

P.C. :

1. This petition is directed against the notice dated March 29, 1989 (Exhibit 'D') issued under Section 148 of the Income Tax Act, 1961 ('Act' for short) directing re-opening of the concluded assessment for the assessment year 1985-86 on the ground that the income has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

2. The petitioners have after receipt of the above notice, vide their letter dated April 20, 1989, specifically, requested the Income-tax Officer to disclose or supply reasons recorded prior to issuance of notice dated March 29, 1989.

3. In spite of the above letter, no reasons were disclosed to the petitioners. Since no reasons were disclosed to the petitioners, they have invoked writ jurisdiction of this court under Article 226 of the Constitution of India.

4. On being noticed, the respondents appeared and filed their affidavit-in-reply dated September 19, 1997 without disclosing reasons in support of re-opening.

5. During the course of hearing, the learned counsel appearing for the revenue was, specifically asked to disclose reasons in spite of non-disclosure of reasons in the counter affidavit dated September 19, 1997 so as to afford one more opportunity to the Revenue.

6. Mr.Kotangale, learned counsel appearing for the Revenue, after having gone through the original file, fairly made a statement in the open Court that no reasons were recorded prior to the issuance of the notice to re-open completed assessment under Section 148 of the Act.

7. It is needless to mention that in view of the

settled position of law the reasons are required to be recorded before issuing notice under Section 148 of the Act to re-open the concluded assessment {see Phool Chand Bajrang Lal & Anr. V/s. I.T.O. & Anr. (1993) 203 ITR 456}. Since no reasons are recorded or at any rate no reasons having been placed on record, we have no option but to conclude that the notice under Section 148 has been issued without recording any reasons in support of notice. In this view of the matter, the impugned notice dated March 29, 1989 issued under Section 148 is liable to quashed and set aside for want of jurisdiction to invoke powers to re-open concluded assessment. So far as other contentions raised in the petition are concerned, it need no consideration in view of the view formed by us to set aside the impugned notice.

8. In the result, impugned notice dated March 29, 1989 (Exhibit ‘D’) seeking to re-open the concluding assessment for the assessment year 1985-86 is quashed and set aside.

9. The petition is allowed. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)